

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2979**

4 (By Delegates Boggs, Skaff, E. Nelson, White, Morgan, M. Poling
5 and Miley)

6 [Passed April 11, 2013; in effect ninety days from passage.]

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8

9 AN ACT to amend and reenact §31-15C-2, §31-15C-4, §31-15C-8, §31-
10 15C-9 and §31-15C-10 of the Code of West Virginia, 1931, as
11 amended, all relating to the Broadband Deployment Council;
12 modifying and adding definitions; clarifying that the data
13 rate for broadband will be the same as specified by the
14 Federal Communications Commission; requiring annual reports to
15 the Joint Committee on Government and Finance; extending the
16 council's public outreach and education efforts beyond
17 unserved areas; rule-making and emergency rule-making
18 authority; revising the council's guidelines and criteria for
19 funding assistance; modifying the application process for
20 project assistance; and revising notice and publication
21 requirements.

22 *Be it enacted by the Legislature of West Virginia:*

23 That §31-15C-2, §31-15C-4, §31-15C-8, §31-15C-9 and §31-15C-10
24 of the Code of West Virginia, 1931, as amended, be amended and
25 reenacted, all to read as follows:

26 **ARTICLE 15C. BROADBAND DEPLOYMENT.**

1 **§31-15C-2. Definitions.**

2 For the purposes of this article:

3 (1) "Broadband" or "broadband service" means any service
4 providing advanced telecommunications capability with the same
5 downstream data rate and upstream data rate as is specified by the
6 Federal Communications Commission and that does not require the
7 end-user to dial up a connection that has the capacity to always be
8 on, and for which the transmission speeds are based on regular
9 available bandwidth rates, not sporadic or burstable rates, with
10 latency suitable for real-time applications and services such as
11 VoIP and video conferencing, and with monthly usage capacity
12 reasonably comparable to that of residential terrestrial fixed
13 broadband offerings in urban areas: *Provided*, That as the Federal
14 Communications Commission updates the downstream data rate and the
15 upstream data rate the Council will publish the revised data rates
16 in the State Register within sixty days of the federal update.

17 (2) "Broadband demand promotion project" means a statewide or
18 regional project to undertake activities to promote demand for
19 broadband services and broadband applications.

20 (3) "Broadband deployment project" means a project to provide
21 broadband services in a type 2 and/or type 3 unserved area, as
22 defined in section six of this article.

23 (4) "Council" means the Broadband Deployment Council.

24 (5) "Downstream data rate" means the transmission speed from
25 the service provider source to the end-user.

26 (6) "Upstream data rate" means the transmission speed from the

1 end-user to the service provider source.

2 (7) "Unserved area" means a community that has no access to
3 broadband service.

4

5 **§31-15C-4. Powers and duties of the council generally.**

6 (a) The council shall:

7 (1) Explore the potential for increased use of broadband
8 service for the purposes of education, career readiness, workforce
9 preparation and alternative career training;

10 (2) Explore ways for encouraging state and municipal agencies
11 to expand the development and use of broadband services for the
12 purpose of better serving the public, including audio and video
13 streaming, voice-over Internet protocol, teleconferencing and
14 wireless networking; and

15 (3) Cooperate and assist in the expansion of electronic
16 instruction and distance education services by July 2014.

17 (b) In addition to the powers set forth elsewhere in this
18 article, the council is hereby granted, has and may exercise all
19 powers necessary or appropriate to carry out and effectuate the
20 purpose and intent of this article. The council shall have the
21 power and capacity to:

22 (1) Provide consultation services to project sponsors in
23 connection with the planning, acquisition, improvement,
24 construction or development of any broadband deployment project;

25 (2) Promote awareness of public facilities that have community
26 broadband access that can be used for distance education and

1 workforce development;

2 (3) Advise on deployment of e-government portals such that all
3 public bodies and political subdivisions have homepages, encourage
4 one-stop government access and that all public entities stream
5 audio and video of all public meetings;

6 (4) To make and execute contracts, commitments and other
7 agreements necessary or convenient for the exercise of its powers,
8 including, but not limited to, the hiring of consultants to assist
9 in the mapping of the state, categorization of areas within the
10 state and evaluation of project applications: *Provided*, That the
11 provisions of article three, chapter five-a of this code do not
12 apply to the agreements and contracts executed under the provisions
13 of this article;

14 (5) Acquire by gift or purchase, hold or dispose of real
15 property and personal property in the exercise of its powers and
16 performance of its duties as set forth in this article;

17 (6) Receive and dispense funds appropriated for its use by the
18 Legislature or other funding sources or solicit, apply for and
19 receive any funds, property or services from any person,
20 governmental agency or organization to carry out its statutory
21 duties; and

22 (7) Perform any and all other activities in furtherance of its
23 purpose.

24 (c) The council shall exercise its powers and authority to
25 bring broadband service to unserved areas. The council may not
26 duplicate or displace broadband service in areas already served or

1 where private industry feasibly can be expected to offer services
2 in the reasonably foreseeable future.

3 In providing governmental funding for broadband deployment
4 projects, the council shall give priority to funding for projects
5 in areas without access to broadband service of any type or any
6 speed before providing governmental funding for projects in areas
7 with existing broadband service below the minimum speeds specified
8 in section two of this article.

9 (d) The council shall report to the Joint Committee on
10 Government and Finance on or before January 1 of each year. The
11 report shall include the action that was taken by the council
12 during the previous year in carrying out the provisions of this
13 article. The council shall also make any other reports as may be
14 required by the Legislature or the Governor.

15 §31-15C-8. Stimulation of demand through public outreach and
16 education.

17 In order to implement and carry out the intent of this
18 article, the council may take such actions as it deems necessary or
19 advisable in order to stimulate demand through public outreach and
20 education. The council shall consider the views, if offered, of
21 affected members of the public, including private industry.

22 §31-15C-9. Development of guidelines and application for funding
23 assistance; emergency rule-making authority.

24 (a) In order to implement and carry out the intent of this
25 article in type 2 and type 3 unserved areas, the council shall

1 propose rules for legislative approval, pursuant to the provisions
2 of article three, chapter twenty-nine-a of this code, to develop
3 comprehensive, uniform guidelines for use by the council in
4 evaluating any request by a project sponsor for funding assistance
5 to plan, acquire, construct, improve or otherwise develop and
6 execute a broadband deployment project in a type 2 or type 3
7 unserved area. The council may promulgate emergency rules pending
8 authorization of the legislative rules.

9 (b) The guidelines shall include the following:

10 (1) The cost-effectiveness of the project;

11 (2) The economic development benefits of the project;

12 (3) The availability of alternative sources of funding that
13 could help finance the project, including, but not limited to,
14 private grants or federal funding and the efforts undertaken to
15 obtain such funding;

16 (4) If the project requires the construction of a network, the
17 applicant's ability to operate and maintain such network;

18 (5) The degree to which the project advances statewide
19 broadband access and other state broadband planning goals;

20 (6) If the project involves the construction of a network, the
21 proposed technologies, bandwidths, upstream data rates and
22 downstream data rates;

23 (7) The estimated dates the project would commence and be
24 completed;

25 (8) How the proposed project compares to alternative proposals
26 for the same unserved area with regard to the number of people

1 served, the amount of financial assistance sought, and the long-
2 term viability of the proposed project; and

3 (9) Any other consideration the council deems pertinent in
4 evaluating requests for funding assistance.

5 (c) Under no circumstances may the council's guidelines allow
6 for the approval of any project for broadband service involving the
7 construction of a network that does not meet the minimum
8 specifications for broadband service as set by the Federal
9 Communications Commission.

10 (d) The council shall create an application form that shall be
11 used by all project sponsors requesting funding assistance from the
12 council to plan, acquire, construct, improve or otherwise develop
13 and execute broadband deployment projects in type 2 or type 3
14 unserved areas or broadband demand promotion projects. The
15 application form shall advise applicants of information required by
16 state agencies that will issue permits and certificates regarding
17 the project.

18 (e) The application form shall require the project sponsor to
19 set forth:

20 (1) The proposed location of the project;

21 (2) If the project involves the construction of a network, the
22 type(s) of unserved area(s) the project proposes to address;

23 (3) The estimated total cost of the project;

24 (4) The amount of funding assistance required and the specific
25 uses of the funding;

26 (5) Other sources of funding available or potentially

1 available for the project;

2 (6) Information demonstrating the need for the project;

3 (7) That the proposed funding of the project is the most
4 economically feasible and viable alternative to completing the
5 project; and

6 (8) Such other information as the council considers necessary.

7 §31-15C-10. Requirements for project funding assistance; review
8 of project application by council; competitive
9 applications.

10 (a) As determined by the council, project sponsors may submit
11 applications for funding assistance. (b) Broadband deployment
12 projects, including projects involving the construction of a
13 network, may be submitted for type 2 and/or type 3 unserved areas
14 as those areas are categorized pursuant to section six of this
15 article. Broadband demand promotion projects may be submitted on
16 a statewide or regional basis.

17 (c) When a completed application is received for a project
18 area, the council shall post notice with the Secretary of State of
19 the first completed application received for that project area.
20 The notice shall be published in the State Register for sixty days
21 to allow for competing applications to be submitted to the council

22 (d) Within thirty days of the close of the sixty-day notice
23 period, the council shall review all applications timely received
24 during the sixty-day period and either:

25 (1) Approve funding for one or more projects after determining

1 that the funding would constitute an appropriate investment of
2 public funds; or

3 (2) Deny the project funding request if the council determines
4 that:

5 (A) The application does not contain all of the required
6 information;

7 (B) Is incomplete;

8 (C) A proposed project is not eligible for funding assistance;
9 or

10 (D) The proposed project is otherwise not an appropriate or
11 prudent investment of state funds.

12 (e) Prior to approving or denying any funding request, the
13 council may seek the advice of any expert consultant retained
14 pursuant to section seven of this article, but the council is not
15 bound by that advice. The council shall also consider the views,
16 if offered, of affected members of the public, including private
17 industry.

18 (f) To apply for or receive any funding assistance for a
19 broadband deployment project or a broadband demand promotion
20 project from the council pursuant to this section, the project
21 sponsor seeking the funding assistance shall submit a completed
22 application to the council on the form prepared for such purpose by
23 the council pursuant to section nine of this article.

24 (g) In reviewing each application, the council may use the
25 engineering, financial and technical expertise of outside
26 consultants in addition to the respective staffs of the government

1 agencies and private-sector entities represented on the council or
2 other government agencies.

3 (h) Notwithstanding any provision of article fifteen-a,
4 chapter thirty-one or any other provision of this code, broadband
5 deployment project proposals and broadband demand promotion project
6 proposals submitted to the council for its consideration pursuant
7 to this article and the council's decisions with regard to such
8 projects shall not be subject to review by the West Virginia
9 Infrastructure and Jobs Development Council.